

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No.27366 of 2022

ORDER:

This writ petition is filed seeking the following relief:

"..to issue a Writ of Mandamus or any other appropriate writ declaring that the action of the 1st Respondent contained in Letter No. 589/MED/PLG/HMDA/2022 dated 24.6.2022 purporting to lift the abeyance orders dated 30.3.2022 relating to the building permission granted in favour of the 4th Respondent in Letter No.04795/BP/HMDA/0656/Med/2021 dated 2.3.2022 in respect of Plot Nos.78 and 79 in Sy.Nos.246/AAA, 247/A, 248/U/A, 249/A 269/A of Bowrampet Village, Dundigal, Gandimaisamma Mandal, Medchal-Malkajgiri is arbitrary and illegal and also declare that the 1st respondent has no authority of law or jurisdiction to grant building permission to the 4th Respondent since the competent authority to grant building permission is the 2nd respondent - Dundigal Municipal Corporation (which has refused to grant building permission to the 4th respondent) and consequently set aside the said building permission and the letter dated 24.6.2022 and direct the respondents to ensure that no construction or excavation/road laying activity takes place in any part of the land in Sy.Nos.246/AAA, 247/A, 248/U/A, 249/A 269/A of Bowrampet Village, Dundigal, Gandimaisamma Mandal, Medchal-Malkajgiri District and".

2. Mr. V. Venkata Ramana, learned senior counsel for the petitioner submits that the building permission was granted in favour of the unofficial respondent on 02.03.2022. He submits that the petitioner made a representation on 05.03.2022 not to grant any permission in view of the pending S.A.No.1168 of 2011 and further requested to cancel the permission. Then on 30.03.2022, an order was passed keeping the said

building permission in abeyance and also directing the respondent No.4 to show cause as to why the permission cannot be cancelled. Thereafter, the impugned order dated 24.06.2022 came to be passed only on the ground that the interim order that was granted in the Second Appeal filed by the petitioner is vacated.

3. Learned senior counsel further submits that the matter came up before the court on 02.08.2022 and the interim orders were restored and in view of that, all the parties in the said proceedings were directed not to make any further construction. It is submitted that the whole reason for passing this impugned order is that the interim orders in Second Appeal were vacated and as such, in view of the restoring the said order in the Second Appeal, the impugned proceedings are liable to be set aside.

4. Mr. T. Surya Satish, learned counsel appearing for the unofficial respondent submits that in the suit i.e. O.S.No.418 of 1996, the petitioners vendor or the petitioners are not parties to the suit i.e. O.S.No.418 of 1996 is a simplicitor injunction and he submits that while granting permission, respondents HMDA are concerned with the prima facie title and basing on the documents of the unofficial respondent and LRS proceedings that were issued, the building permission was granted in favour of the unofficial respondent. He submits that the pendency of the Second Appeal will not preclude the respondents from granting permission and the respondents are

not parties to the said suit. He also submits that when there was an interference by the petitioner, the unofficial respondent has filed O.S.No.203 of 2022 for perpetual injunction and also filed I.A.No.198 of 2022 seeking ad-interim injunction and on 15.03.2022, the court below has granted injunction restraining the writ petitioner herein from interfering and on 28.04.2022, the writ petitioner has filed counter affidavit in I.A.No.198 of 2022. He submits that suppressing the said facts, the writ petitioner has come up before this court.

5. In response to the same, the learned senior counsel submits that the whole basis for vacating the said abeyance order was about the interim orders being vacated in the Second Appeal. The said aspect of the injunction is not a material fact to this writ petition. As such, the petitioner has not stated the said facts in this writ petition.

6. Counter affidavit has been filed on behalf of the HMDA wherein the learned standing counsel Mr. V. Narsimha Goud submits that the interim order is granted on the ground that no opportunity has been given to the petitioner. He submits that initially after keeping the building permission order in abeyance, they have issued a notice to the petitioner and the petitioner along with the reply has not filed any relevant material except motioning of addressing a letter about the Second Appeal. As per the provisions of HMDA Act and particularly in the light of the Section 53(4) and

22 of the Act, they can revoke the permission when there is any suppression of fact regarding pending civil disputes between the parties. As the petitioner could not file any other document in support of the same, the abeyance order which was passed on 30.03.2022 was lifted by them.

7. Mr. N. Praveen Kumar, learned standing counsel for the respondent municipality submits that there are no specific directions to them from the court.

8. According to the petitioner, in view of the pending Second Appeal in respect of the very same property, the unofficial respondent is not entitled for a building permission. It is an admitted fact that neither the petitioner nor the petitioner's vendor is party to the suit and also it is a simple suit for injunction. Though in Second Appeal, the interim orders are restored, still the same are not binding on the respondents as they are not parties to the said proceedings and while granting building permission, the respondents are only concerned with prima facie title and basing on the documents that are filed by the unofficial respondent, the respondent municipality have looked into the same and granted permission. Even as per the impugned order, the petitioner has failed to file any other documents except referring to the Second Appeal. Even if the orders are restored, that will not have bearing and the petitioner has to work out his remedies and that cannot be a ground for the respondents to grant permission or not to

grant or to cancel the permission in favour of the unofficial respondents. For the purpose of settling the civil disputes, the HMDA cannot be a Forum and they cannot further decide all these issues until and unless there are specific orders from the competent court restraining them from doing a particular work.

9. Further, the conduct of the petitioner in not mentioning about O.S.No.203 of 2022 and where a counter is filed by the petitioner in respect of the very same property, certainly amounts to suppression of fact and a person who has come to the court with suppression of facts and unclean hands is not entitled for any relief from this court. On this ground alone, the writ petition is liable to be dismissed.

10. Accordingly, this writ petition is dismissed. However, there shall be no order as to costs.

The miscellaneous applications, if any shall stand automatically closed.

8th August, 2022
gvl

LALITHA KANNEGANTI, J